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4 **UNITED STATES DISTRICT COURT**
5 **DISTRICT OF NEVADA**
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7 TYRONE NOEL NUNN,

8 Plaintiff,

9 v.

10 JAMES DZURENDA, *et al.*,

11 Defendants.
12

Case No. 2:24-cv-01795-RFB-MDC

ORDER

13 Plaintiff Tyrone Noel Nunn brings this civil-rights action under 42 U.S.C. § 1983 to redress
14 constitutional violations that he claims he suffered while incarcerated at Ely State Prison and High
15 Desert State Prison. ECF No. 1-1. On October 21, 2024, this Court ordered Nunn to file a fully
16 complete application to proceed *in forma pauperis* or pay the full \$405 filing fee on or before
17 December 16, 2024. ECF No. 3. The Court warned Nunn that the action could be dismissed if he
18 failed to file a fully complete application to proceed *in forma pauperis* with all three documents
19 or pay the full \$405 filing fee for a civil action by that deadline. *Id.* at 2. That deadline expired and
20 Nunn did not file a fully complete application to proceed *in forma pauperis*, pay the full \$405
21 filing fee, or otherwise respond.

22 **I. DISCUSSION**

23 District courts have the inherent power to control their dockets and “[i]n the exercise of
24 that power, they may impose sanctions including, where appropriate . . . dismissal” of a case.
25 Thompson v. Hous. Auth. of City of Los Angeles, 782 F.2d 829, 831 (9th Cir. 1986). A court may
26 dismiss an action based on a party’s failure to obey a court order or comply with local rules. See
27 Carey v. King, 856 F.2d 1439, 1440-41 (9th Cir. 1988) (affirming dismissal for failure to comply
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1 with local rule requiring *pro se* plaintiffs to keep court apprised of address); Malone v. U.S. Postal
2 Service, 833 F.2d 128, 130 (9th Cir. 1987) (dismissal for failure to comply with court order). In
3 determining whether to dismiss an action on one of these grounds, the Court must consider: (1)
4 the public’s interest in expeditious resolution of litigation; (2) the Court’s need to manage its
5 docket; (3) the risk of prejudice to the defendants; (4) the public policy favoring disposition of
6 cases on their merits; and (5) the availability of less drastic alternatives. See In re
7 Phenylpropanolamine Prod. Liab. Litig., 460 F.3d 1217, 1226 (9th Cir. 2006) (quoting Malone v.
8 U.S. Postal Serv., 833 F.2d 128, 130 (9th Cir. 1987)).

9 The first two factors, the public’s interest in expeditiously resolving this litigation and the
10 Court’s interest in managing its docket, weigh in favor of dismissal of Nunn’s claims. The third
11 factor, risk of prejudice to defendants, also weighs in favor of dismissal because a presumption of
12 injury arises from the occurrence of unreasonable delay in filing a pleading ordered by the court
13 or prosecuting an action. See Anderson v. Air West, 542 F.2d 522, 524 (9th Cir. 1976). The fourth
14 factor—the public policy favoring disposition of cases on their merits—is greatly outweighed by
15 the factors favoring dismissal.

16 The fifth factor requires the Court to consider whether less drastic alternatives can be used
17 to correct the party’s failure that brought about the Court’s need to consider dismissal. See Yourish
18 v. Cal. Amplifier, 191 F.3d 983, 992 (9th Cir. 1999) (explaining that considering less drastic
19 alternatives *before* the party has disobeyed a court order does not satisfy this factor); accord
20 Pagtalunan v. Galaza, 291 F.3d 639, 643 & n.4 (9th Cir. 2002) (explaining that “the persuasive
21 force of” earlier Ninth Circuit cases that “implicitly accepted pursuit of less drastic alternatives
22 prior to disobedience of the court’s order as satisfying this element[,]” *i.e.*, like the “initial granting
23 of leave to amend coupled with the warning of dismissal for failure to comply[,]” have been
24 “eroded” by Yourish). Courts “need not exhaust every sanction short of dismissal before finally
25 dismissing a case, but must explore possible and meaningful alternatives.” Henderson v. Duncan,
26 779 F.2d 1421, 1424 (9th Cir. 1986). Because this action cannot realistically proceed until and
27 unless Nunn either files a fully complete application to proceed *in forma pauperis* or pays the \$402
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1 filing fee for a civil action, the only alternative is to enter a second order setting another deadline.
2 But the reality of repeating an ignored order is that it often only delays the inevitable and squanders
3 the Court's finite resources. The circumstances here do not indicate that this case will be an
4 exception: there is no hint that Nunn needs additional time or evidence that he did not receive the
5 Court's order. Setting another deadline is not a meaningful alternative given these circumstances.
6 So, the fifth factor favors dismissal.

7 **II. CONCLUSION**

8 Having thoroughly considered these dismissal factors, the Court finds that they weigh in
9 favor of dismissal.

10 **IT IS THEREFORE ORDERED** that this action is dismissed without prejudice based on
11 Nunn's failure to file a fully complete application to proceed *in forma pauperis* or pay the full
12 \$405 filing fee in compliance with this Court's October 21, 2024, order. The Clerk of Court is
13 directed to enter judgment accordingly and close this case. No other documents may be filed in
14 this now-closed case. If Nunn wishes to pursue his claims, he must file a complaint in a new case.

15 **IT IS FURTHER ORDERED** that Plaintiff may move to reopen this case and vacate the
16 judgment by filing a motion for reconsideration within 28 days of this Order. In this motion, Nunn
17 would be required to explain what circumstances delayed him from paying the filing fee or filing
18 the application to proceed *in forma pauperis* and a complaint in compliance with LSR 2-1. If the
19 Court finds there to be good cause or a reasonable explanation for Nunn's failure, the Court will
20 reopen the case and vacate the judgment.

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22 **DATED:** April 24, 2025.

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25 **RICHARD F. BOULWARE, II**
26 **UNITED STATES DISTRICT JUDGE**
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